

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 384/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Muhammad Junaid, (Assistant Director) S/O Muhammad Saeed R/O House  
No. 156, New Colony Jahangir Ababad Tehkal Bala Peshawar.  
.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Industries and Commerce Khyber Pakhtunkhwa, Peshawar.  
.... (Respondents)

Mr. Zartaj Anwar  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....15.03.2022  
Date of Hearing.....31.07.2023  
Date of Decision.....09.08.2023

JUDGMENT

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:


**“On acceptance of this appeal the contractual service of the appellant followed by regularization may kindly be counted for the purpose of pay fixation, any other relief which may not ask specifically may also be awarded in favor of appellant.”**



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Assistant Director Software (BPS-17) in the Khyber Pakhtunkhwa Ehtesab Commission on contract basis vide order dated 23.06.2015. He was performing his duty with zeal and zest and up to the entire satisfaction of his superiors. Later on, services of the appellant was regularized vide order dated 01.08.2017. The Khyber Pakhtunkhwa Ehtesab Commission became defunct and the regular employees of the commission kept in the surplus pool under section 6 of the Khyber Pakhtunkhwa Ehtesab Commission Service Regularization Act, 2019. Appellant was adjusted and posted as Assistant Director in the Director General of Industries & Commerce of Khyber Pakhtunkhwa vide order dated 27.06.2019. He filed departmental appeal on 25.11.2021 for counting of contractual service for the purpose of pay fixation which was not responded within a statutory period, hence instant service appeal.


3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and his right secured and guaranteed under the law has been violated. He further contended that appellant performed his duties in the respondent department without any break and regularly, but not allowing pay fixation to the appellants is illegal, against the law and judgments of Apex court. He, therefore, requested for acceptance of instant service appeal.



5. The learned District Attorney contended that the appellant has been treated strictly in accordance with Khyber Pakhtunkhwa Ehtesab Commission (Repeal) Act, 2018, Surplus Pool Policy, 2001 and other law governing rights of the appellant. He further contended that was in surplus pool under Section 6(b) & 6(c) of the Khyber Pakhtunkhwa Ehtesab Commission (Repeal) Act, 2018 and were further adjusted under para 5(c) of the Surplus Pool Policy, 2001 which states that adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus. Lastly he submitted that Notification of Finance Department was about pay protection to gazetted contract employees whose services were regularized and not about employees of Surplus Pool.

6. Perusal of record reveals that appellant was appointed as Assistant Director Software (BPS-17) in the Khyber Pakhtunkhwa Ehtesab Commission on contract basis vide order dated 23.06.2015. Services of the appellant was regularized vide order dated 01.08.2017 under Section 5 of Khyber Pakhtunkhwa Ehtesab Commission Employees Service Regularization Act 2017. The Khyber Pakhtunkhwa Ehtesab Commission became defunct and the regular employees of the commission kept in the surplus pool under section 6 of the Khyber Pakhtunkhwa Ehtesab Commission Service Regulation Act 2019. He was posted as Assistant Director (BPS-17) in the Directorate General of Industries & Commerce of Khyber Pakhtunkhwa vide order dated 27.06.2019. Appellant requested respondent vide departmental appeal dated 25.11.2021 for considering their contractual service for the purpose of pay fixation which was not responded.



7. Services of the appellant were regularized vide notification dated 01.08.2017. Finance department issued notification bearing no. FD (SOR-1)12-2/2020(34323) dated 18.03.2021 subject of which was "protection of pay of contractual employees on regularization/appointment on regular basis" which provide: "In pursuance to the Finance Division Office Memorandum No. 4(2)2/2014-237 dated 07.04.2015 the competent authority (Provincial Cabinet) is pleased to allow the pay protection to gazetted contract employees on their regularization/appointment on regular basis subject to the following conditions":

- I. That the contract appointment has been made in BPS on standard terms and conditions, circulated by this Provincial Government as amended form time to time.
- II. That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
- III. That regularization /regular appointment has been made with the approval of competent authority,.
- IV. That there is no break/ interruption between contract and regular service.
- V. That the service rendered on contract basis shall not qualify for pension/gratuity.
- VI. That in case of regular appointment in lower grade, pay shall not be protected.
- VII. That the pay protection /fixation of pay will be admissible with immediate effect with regard to old/new ca ses which are fulfilling the pay protection criteria mentioned above.


Appellant was appointed in BPS-17 on standard terms and conditions his service was regularized with the approval of competent authority. There is no break/interruption between contract service and regular service of the appellant. So in our view appellant fulfill criteria for admissibility of




their pay protection. Apex court in 2008 SCMR 144 and CPC NO.39 of 2021 has granted such like relief of protection of pay fixation to the public servants.

8. As a sequel to above discussion, we allow the appeal of the appellant as prayed for. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 9<sup>th</sup> day of August, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

Kaleemullah

  
(RASHIDA BANO)  
Member (J)